



U.S. Department of Justice

United States Attorney
Southern District of New York

*The Silvio J. Mollo Building
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New York, New York 10007*

May 13, 2022

BY ECF

Honorable Jesse M. Furman
United States District Judge
Southern District of New York
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

**Re: *United States v. Joshua Adam Schulte,*
S3 17 Cr. 548 (JMF)**

Dear Judge Furman:

The Government respectfully submits this letter in response to the defendant's Requests to Charge (D.E. 778, the "Requests") pursuant to the Court's scheduling order dated February 15, 2022 (D.E. 711).

Generally, the Government respectfully submits that its Requests to Charge (D.E. 777) are a clearer and more accurate statement of the relevant law. The Government responds specifically to the following Requests by the defendant.

With respect to the defendant's Requests on Count Two (III.B), the illegal transmission of unlawfully possessed national defense information in violation of 18 U.S.C. § 793(e), the Requests repeatedly refer to the provision of 18 U.S.C. § 793(e) relating to the transmission of "information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation." Count Two, however, charges the illegal transmission of "documents, writings, plans, instruments, and notes relating to the national defense," and does not charge the transmission of information. Thus, as explained in the Government's requests (D.E. 777 at 19 n.11), the defendant's references to "information," and the inclusion of the element that the defendant had reason to believe the information "could be used to the injury of the United States or to the advantage of any foreign nation" are inapplicable to the charged offense. *See* Requests III.B, III.B.1, III.B.2, III.B.3, III.B.4. These errors are incorporated by reference in the defendant's Requests with respect to Counts Three and Four. *See* Requests III.C, III.D.

Also with respect to the defendant's Requests on Count Two, the Requests include language from 18 U.S.C. § 793(d) pertaining to the illegal transmission of lawfully possessed national defense information, whereas Count Two charges the illegal transmission of national defense information possessed without authorization, 18 U.S.C. § 793(e). *See* Requests III.B.1.

Finally, with respect to the defendant's Requests on Count Six (III.F), unauthorized access to a computer to obtain information from a department or agency of the United States in violation of 18 U.S.C. § 1030(a)(2), the defendant's requested instruction on the third element of the offense—that the information so obtained was from a department or agency of the United States—inappropriately repeats and re-emphasizes the first element of the offense—that the defendant intentionally accessed a computer without authorization or exceeding his authorized access. *See* Requests III.F.3.

DAMIAN WILLIAMS
United States Attorney

cc: Standby Counsel (by ECF)
Joshua Adam Schulte (by mail)